



BILLING CODE: 5001-03

DEPARTMENT OF DEFENSE

Department of the Army

Special Communication and Contact Control Measures

AGENCY: Department of the Army, DoD.

ACTION: Notice; comment request.

SUMMARY: This directive establishes the Special Communications and Contacts Control Measures (SCCCM) program to provide specific limitations on the communications and contacts of Army Corrections Command (ACC) prisoners to protect national security, public safety, the good order, discipline and correctional mission of the Army Corrections System (ACS) facilities from acts of violence or terrorism.

DATES: Comments are due by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Mail comments to: Office of the Provost Marshal General (Gregory W. Limberis), 2800 Army Pentagon, Washington, DC 20310.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Stroebe, (703) 545-5935

SUPPLEMENTARY INFORMATION:

(a). Upon direction of the Assistant Secretary of the Army for Manpower and Reserve Affairs (ASA (M&RA)), the Commander, ACC, may authorize the Commander of an ACS Facility to implement SCCC that are reasonably necessary to protect persons against the risk of death or serious bodily injury. These procedures may be implemented upon written notification to the Commander, ACC, by the ASA (M&RA), that there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons

or substantial damage to property that would entail the risk of death or serious bodily injury to persons. These SCCCM ordinarily may include housing the prisoner in administrative segregation and/or limiting certain conditions of confinement, including, but not limited to, correspondence, visiting, interviews with representatives of the news media, and use of the telephone, as is reasonably necessary to protect persons against the risk of death or serious bodily injury. The authority of the Commander, ACC under this paragraph may not be delegated.

(b). Designated ACS facility staff shall provide to the affected prisoner, as soon as practicable, written notification of the restrictions imposed and the basis for the restrictions. The notice's statement as to the basis may be limited in the interest of prison security or safety, to protect against acts of violence or terrorism that could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. The prisoner shall sign for and receive a copy of the notification. The prisoner's attorney(s) of record shall also provide a written acknowledgement of receipt of the notice and an agreement to abide by the SCCCM.

(c). Initial placement of a prisoner in administrative segregation and/or any limitation of the prisoner's conditions of confinement in accordance with paragraph (a) of this section may be imposed for up to 120 days or, with the approval of the ASA (M&RA), a longer period of time not to exceed one year. Special restrictions imposed in accordance with paragraph (a) of this section may be extended thereafter by the Commander, ACC, in increments not to exceed one year, upon receipt by the Commander, ACC of an additional written notification from the ASA (M&RA) that there continues to be a substantial risk that the prisoner's communications or contacts with other persons could result in death or serious bodily injury to persons or substantial

damage to property that would entail the risk of death or serious bodily injury to persons. The authority of the Commander, ACC under this paragraph may not be delegated.

(d). In any case where the Secretary of the Army specifically so orders, based on information from the Provost Marshal General/Commanding General, United States Army Criminal Investigation Command (USACIDC) that reasonable suspicion exists to believe that a particular prisoner may use communications with attorneys or their agents to solicit, further, or otherwise facilitate acts of terrorism, the Commander, ACC, shall, in addition to the SCCCM imposed under paragraph (a) of this section, provide appropriate procedures for the monitoring or review of communications between that prisoner and attorneys or attorneys' agents who are traditionally covered by the attorney-client privilege, for the purpose of deterring future acts of terrorism.

(1) The certification by the Secretary of the Army under this paragraph (d) shall be in addition to any findings or determinations relating to the need for the imposition of other SCCCM as provided in paragraph (a) of this section, but may be incorporated into the same document.

(2) Except in the case of prior court authorization, the Commander, ACC, shall provide written notice to the prisoner and to the attorneys involved prior to the initiation of any such monitoring or review authorized under this paragraph (d). The notice shall explain:

(i) That, notwithstanding the provisions of DoDI 1325.07, AR 190-47, or other rules, all communications between the prisoner and attorneys may be monitored, to the extent determined to be reasonably necessary for the purpose of deterring future acts of terrorism;

(ii) That communications between the prisoner and attorneys or their agents are not protected by the attorney-client privilege if they would facilitate criminal acts or a conspiracy to commit criminal acts, or if those communications are not related to the seeking or providing of legal advice.

(3) The Commander, ACC, with the concurrence of the Judge Advocate General and the Army General Counsel, shall employ appropriate procedures to ensure that all attorney-client communications are reviewed for privilege claims and that any properly privileged materials (including, but not limited to, recordings of privileged communications) are not retained during the course of the monitoring. To protect the attorney-client privilege and to ensure that the investigation or judicial proceeding is not compromised by exposure to privileged material relating to the investigation, judicial proceeding or to defense strategy, a privilege team shall be designated by the Judge Advocate General, consisting of individuals not involved in the underlying investigation or judicial proceeding. The monitoring shall be conducted pursuant to procedures designed to minimize the intrusion into privileged material or conversations. Except in cases where the person in charge of the privilege team determines that the acts of terrorism are imminent, the privilege team shall not disclose any information unless and until such disclosure has been approved by a federal or military judge presiding over the legal matter for which attorneys or their agents represent the particular prisoner.

(e). The affected prisoner may seek review of any specific limitation on communications or contacts imposed pursuant to this directive in accordance with AR 190-47, paragraph 10-14. The Commander, ACC will act on any request for review.

The Provost Marshal General is the proponent for this policy and will incorporate the provisions of this directive into AR 190-47 as soon as possible. This directive will be rescinded upon publication of the revised regulation.

Brenda S. Bowen,
Army Federal Register Liaison Officer.
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